

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of:)	
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Implementation of Pay Telephone)	
Reclassification and Compensation Provisions)	CC Docket 96-128
of the Telecommunications Act of 1996)	
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Petitioners' Alternative Rulemaking Proposal)	
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**COMMENTS OF
THE AD HOC COALITION FOR THE RIGHT TO COMMUNICATE
REGARDING PETITIONERS' ALTERNATIVE
RULEMAKING PROPOSAL**

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The Ad Hoc Coalition for the Right to Communicate ("Coalition"), the current members of which are listed in Appendix A, submits these comments pursuant to the Public Notice issued by the Federal Communications Commission ("Commission") on March 2, 2007, regarding the Alternative Rulemaking Proposal filed by Martha Wright et al. on March 1, 2007 ("Second Wright Petition"). The members of the Coalition submit these Comments in order to respectfully urge the Commission to adopt the proposals of the Second Wright Petition by: i) establishing benchmark rates for long-distance calls from incarcerated persons, with no per-call charge, and ii) requiring prison telephone service providers to allow debit calls as well as collect calls

Since the filing of the First Wright Petition,¹ the need for relief from the high cost of and service problems associated with collect calls from family members and clients in prison has grown more urgent. More people every year are being placed in immigration detention or sentenced to prison. **As** a result, more families and more social service providers are being forced to pay the excessive costs of collect calls from prison.

These excessive costs force families with incarcerated or detained members to make untenable choices. Contact with family members in prison is essential to the well-being of the families and to the ability of the incarcerated person to successfully re-enter society after the incarceration has ended. Often, families are too far from their loved ones to visit, so they must rely on phone calls to keep in contact. Families go to extreme lengths to pay for those calls. Some family members outside of prison have to take second jobs or work more overtime hours. The result is that they have less time to care for their children and to spend with other family members. The expense of collect calls from prison even forces some low-income families to go without food, shelter, or medical treatment.

Both social services essential to ensuring prisoners' successful re-entry into society and constitutionally protected legal representation suffer as a result of the high cost of prisoner collect calls. Some social service providers and attorneys are forced to reject calls from their clients. Others pay for collect calls out of funds they could put to better use by serving others in need of assistance.

These are not choices that families, service providers or lawyers should have to make. **As** the First and Second Wright Petitions establish, there is no need for the present system to remain in place. ~~An~~ appropriate remedy ~~is~~ readily apparent and available. The Commission

¹ Martha Wright, et al., Petition For Rulemaking or, in the Alternative, Petition to Address Referral Issues in a Pending Rulemaking (November, 2003) (the "First Wright Petition").

should i) set benchmark long distance calling rates and eliminate per-call charges, and ii) require prison telephone service providers to allow debit calling. These two steps would alleviate the hardship to families, preserve a prisoner's right to counsel, and remove obstructions to the delivery of essential social services. Ultimately, this approach would promote social stability and facilitate re-entry of prisoners as they transition from prison back to their families and communities.

A. The Interest of the Ad Hoc Coalition for the Right to Communicate

The Coalition is a diverse group of more than 50 individuals and organizations, each of whom suffers from the high cost of phone calls from incarcerated persons:

- o Family members -- People whose children, siblings, spouses and other family members are in jail, prison or immigration detention are forced either to bear the exorbitant cost of paying for collect calls, often at the expense of their ability to afford food or rent, or to forego communicating with their loved ones;
- o Legal representatives -- Attorneys who provide criminal, immigration and other civil representation to clients who are in jail, prison or immigration detention are forced either to bear the exorbitant cost of paying for collect calls, often at the expense of their ability to serve other clients, or to refuse collect calls from their clients, many of whom have no other way of communicating with counsel;
- o Social service agencies -- Non-profit agencies that provide social services to people who are in jail, prison or immigration detention are forced either to bear the exorbitant cost of paying for collect calls, often at the expense of their ability

to serve other clients, or to refuse collect calls from their clients, many of whom have no other way of communicating with the agencies;

- o Advocacy groups -- Groups that advocate for the interests of people in prison and for their families watch their members and clients suffer as a result of the high cost of collect calls from prison.

Members of the Coalition came together in 2004 to provide the Commission with information about these harmful effects. At that time, the Coalition submitted comments in support of the First Wright Petition.’

The Coalition submits its current set of comments in support of the Second Wright Petition to provide the Commission with information about: 1) the increasing need for the Commission to provide relief from the excessive cost of long-distance collect calls from prisons, 2) how the excessive cost of those calls is harming the members of the Coalition, and 3) how Coalition members will benefit if the relief recommended in the Second Wright Petition is provided.

The identity and specific interest of each member of the Coalition are explained in greater detail in Appendix A.

B. History of This Proceeding

In November 2003, Martha Wright and other petitioners filed their first petition for rulemaking to seek relief from anticompetitive practices concerning collect calls placed by people incarcerated in private prisons. The petition asked the Commission to i) “prohibit exclusive inmate calling service agreements and collect call-only restrictions at privately-

’ The Coalition’s 2004 Comments are attached as Appendix C.

administered prisons and require such facilities to permit multiple long distance carriers to interconnect with prison telephone systems,” and ii) “require inmate service providers to offer debit card or debit account service as an alternative to collect calling services.”³ The Commission has not acted in response to that petition.

On March 1, 2007, Martha Wright and other petitioners filed an alternative proposal, in which they renewed their request for the Commission to provide relief from the “exorbitant rates,” per-call charges, and poor service associated with long-distance calls from prisons.⁴ They requested that, if the Commission did not grant their earlier request for relief, then the Commission should, alternatively, provide relief from the costs of long-distance collect calls from prison by: i) establishing benchmark rates for those calls (at a maximum of \$0.20 **per** minute for debit calling and \$0.25 per minute for collect calling, with no per-call charge, and with higher benchmarks for providers offering prisoners a specified minimum amount of calling services free of charge), and ii) requiring prison telephone service providers to allow debit calling from prison.’

This Second Wright Petition demonstrates that the need to reduce the excessive cost of calls from people incarcerated in prison has significantly intensified since the filing of the First Wright Petition. The Second Wright Petition establishes an “upward trend in commission rates and inmate calling services” that has “continued for years” since, and even before, the filing of the First Wright Petition.⁶ The excessive cost of telephone conversations with incarcerated

³ First Wright Petition at 3-4.

⁴ Second Wright Petition at 8.

⁵ Second Wright Petition at 2.

⁶ *Ibid.*

persons has attracted significant attention from political representatives and from organizations calling for relief.⁷

Additionally, in the Second Wright Petition, Douglas A. Dawson, a telecommunications expert providing a declaration in support of the proposed benchmark rates, concluded that the profit margins retained by telephone companies on collect calls from prisoners “are clearly excessive” and that collect call-only requirements at the rates currently charged in correctional institutions are not penologically justified.’ To the extent these policies prohibit affordable calling or lead to poor quality service, they harm the people who must be in touch with inmates. Petitioners explain that, while the relief sought in the First Wright Petition remains important and viable, the alternative proposal set forth in the Second Wright Petition –establishing benchmark rates, eliminating per-call charges, and allowing debit calling – would provide important relief while introducing fewer legal, technical and engineering costs.’

On March 2,2007, the Commission issued a Public Notice seeking comments on the Second Wright Petition.” In the Public Notice, the Commission stated that the Second Wright Petition responds to the issues examined in the Commission’s ongoing proceeding regarding inmate calling services and “raises important questions that should be addressed in that proceeding.”” The Commission invited interested parties to file comments no later than April 2,

⁷ Second Wright Petition at 8-10.

⁸ Second Wright Petition, Appendix B at 14.

⁹ Second Wright Petition at 6-8.

¹⁰ See DA 07-961A1 (March 2,2007).

¹¹ *Ibid.*

2007; this deadline was later extended to May 2, 2007. The Coalition submits these comments in response.

C. The Current System Imposes Excessive **Costs on the Members **of** the Coalition**

In 2004, the Coalition's comments in support of the First Wright Petition described how the high cost of collect calls from prison interferes with the re-entry of prisoners into society, hurts family relationships, and obstructs constitutionally protected attorney-client communication. We reaffirm those comments here, and submit these additional comments now to explain that the need for relief has become even greater than it was in 2004, and that the alternative proposal set forth in the Second Wright Petition would provide vitally needed relief to the members of the Coalition.

As set forth in the 2004 comments, phone conversations are often the only way for families to maintain contact with loved ones who are in prison or immigration detention.¹² Many prisoners are incarcerated far from their families, making visitation difficult or impossible.¹³ High rates of illiteracy among people in prison often preclude letter writing.¹⁴

The high cost of telephone calls, the barriers to establishing accounts with telephone service providers, and the poor quality of telephone service that is available can force families to choose between paying for their only link to incarcerated family members and paying for expenses essential to the well being of family members outside of prison.¹⁵ Low income families are often unable to pay both for shelter or food and for the cost of collect calls from a frightened

¹² 2004 Comments at 12-19

¹³ *Id.* at 18.

¹⁴ *Id.* at 15.

¹⁵ *See, e.g.*, Appendix **A** at 1; 2004 Comments at 17-19.

son or daughter who is in prison. The financial pressures are particularly severe for families whose primary wage earner is incarcerated. These families face new financial burdens when a provider is incarcerated and must surmount new difficulties in providing and caring for children.¹⁶

Being out of touch with one's family harms people in prison and in immigration detention. It also hurts society, because prisoners who are unable to maintain contact with their families are more likely to have disciplinary problems while in prison, less likely to secure and successfully complete parole, and more likely to commit another crime upon their release.¹⁷ Families are also harmed when a family member is imprisoned; this harm is exacerbated when families struggle to keep in touch. Little systematic data regarding the effect of incarceration on prisoners' families exists, but initial research has begun to demonstrate that having a parent in prison is traumatic for children. Many children with incarcerated parents experience poor academic performance and emotional suffering and are more likely to abuse drugs and alcohol and become involved in the justice system themselves.* Family members report significant emotional stress and isolation following a loved one's incarceration, along with declining health for both parents and children."

The need for relief is more urgent now than in 2004, for several reasons. First, more and more people are suffering the adverse effects of the high cost of collect calls from prisons,

¹⁶ Joyce A. Arditti et al., *Saturday Morning at the Jail: Implications of Incarceration for Families and Children*, 52 FAMILY RELATIONS 199 (2003).

¹⁷ 2004 Comments at 19-29; Appendix A at 10,18.

¹⁸ 2004 Comments at 17-18; Joyce A. Arditti et al., *Saturday Morning at the Jail* at 196; Appendix A at 8.

¹⁹ *Id.* at 200.

because the number of incarcerated people has risen dramatically. In 2005, the national prison population had increased by 1.9% over the previous year.”

The number of people incarcerated in private prisons has grown even more dramatically. In 2005 alone, the number of federal prisoners held in private prisons increased 9.2%, and the number of state prisoners held in private prisons increased 8.8%.²¹ The family members, friends, advisors and service providers of inmates in privately operated prisons, who were the focus of the First Wright Petition, generally experience calling rates higher than those charged to their counterparts with family, friends or clients in prisons managed by states or the Federal Bureau of Prisons.²² Both the First Wright Petition and the Second Wright Petition establish that the rates charged by the Federal Bureau of Prisons and certain state facilities are lower than or equivalent to the proposed benchmark rates – which are themselves significantly lower than the rates imposed by most private facilities.²³ More inmates in private facilities means more families facing “exorbitant rates.”

Likewise, the number of immigrants in detention has risen since 2004 and is expected to continue rising. The number of Immigration and Customs Enforcement detainees increased 2.6% during 2005. It is likely to continue growing even more quickly – the President expects an

²⁰ U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2005* (November 2006), p. I, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p05.pdf> [hereinafter *Prisoners*].

²¹ *Prisoners* at 1. See also U.S. Prison Population Projected to Soar by 200,000 in Five Years, International Herald Tribune, Feb. 14, 2007, available at <http://www.ihl.com/articles/2007/02/14/news/prison.php>.

²² Second Wright Petition, Appendix B at 15-18.

²³ See First Wright Petition, Dawson Affidavit; Second Wright Petition, Appendix B

increase in the population of detainees of at least 25% between 2006 and 2007.²⁴ Not only are the absolute numbers of immigrant detainees up, but also the proportion of them held in private prisons has increased by 40.9% since 2004.²⁵ More and more immigrants are detained in remote detention centers, far from both family members and counsel, making telephone contact more important.²⁶

The increase in the prison population heightens the need to plan for successful re-entry into society and for the reduction of recidivism rates, because recidivism contributes to prison overcrowding.²⁷ The high cost of prison calling services frustrates the goal of reentry in several ways. *See* discussion *infra* at 13.

Additionally, states are finding it increasingly difficult to pay for constitutionally mandated indigent defense services in criminal cases.²⁸ The high cost of collect calls from

²⁴ *See, e.g.*, U.S. Department of Homeland Security, Fact Sheet: U.S. Department of Homeland Security Announces 6% Increase in Fiscal Year 2007 Budget Request (February 6, 2006) (indicating a budget request for an increase in detention bed space by 25%. “New bed space will also be used to return criminal aliens upon release from state and local prisons . . . This bed space request will support the detention and removal of an additional 100,000 apprehended aliens each year.”).

²⁵ *Prisoners supra* note 21 at 10

”Testimony of Christina Fiflis on Behalf of the American Bar Association Before the House Subcommittee on Border, Maritime and Global Terrorism, March 15, 2007, p. 3, available at <http://homeland.house.gov/SiteDocuments/20070315162756-61525.pdf>.

²⁷ *See*, American Bar Association, Criminal Justice Section, Recommendation Adopted by the House of Delegates (Aug. 8-9, 2005); Catherine Anderson, Chair, Criminal Justice Section, American Bar Association, Report (Aug. 2005); Gary Fields, *States Attempt to Cut Prison Bill, Cost Nears \$35 Billion a Year*, Wall St. J., Dec. 21, 2005, at A1.

²⁸ *See, e.g.*, Vesna Jaksic, *Public Defenders, Prosecutors Face a Crisis in Funding*, NATIONAL LAW JOURNAL, March 27, 2007 (describing lawsuits against states on constitutional grounds and one state defender system that “recently considered voting to stop accepting new cases”); James L. Baillie, *Our Public Defender System: A Funding Crisis*, 61 BENCH & BAR OF MINNESOTA (February 2004) (“the Minnesota Supreme Court issued an order in which the Court

prison heightens the financial strains on indigent defense providers and reduces the effectiveness of these constitutionally mandated attorneys. *See* discussion *infra* at 14-15.

1. The System Forces Families to Choose Between Sustaining Relationships With Family Members and Affording Basic Food, Shelter and Medical Care

The relief requested in the Second Wright Petition, if effectuated by the Commission, would minimize the cruel choice that currently confronts so many families who must choose between sustaining relationships with loved ones in prison and providing food, shelter and medical care to the rest of the family.

Robert Pollin, Ph.D., a professor of economics at the University of Massachusetts-Amherst, has examined the potential savings that would result from establishing the benchmark calling rates and eliminating the per-call charges. *See* Declaration of Robert Pollin, Ph.D., attached as Appendix B. He states that the majority of families with an incarcerated member have very low incomes, so that even without the burden of paying for collect calls from prison they would struggle to pay for food, shelter, medical care and other basic expenses.²⁹ Most households with an incarcerated member contain at least one minor child.³⁰

Professor Pollin calculates that the cost difference between the proposed benchmark rates and the rates that many families currently pay “represents a significant share of necessary household expenses for low-income households.” If the proposed benchmark rates were adopted, Professor Pollin estimates, families could spend 21% more on housing, 33% more on food, 43% more on healthcare or 29% more on childcare – all of which the typical family with

‘acknowledged the fiscal crisis [the public defenders] are experiencing, threatening the ability of the public defenders to fulfill their crucial role in the justice system’’).

²⁹ *See* Appendix B at 4-5; *see also* Arditti et al., Saturday Morning at the Jail, *supra* n.16 at 201.

³⁰ Appendix B at 4.

an incarcerated member has difficulty affording. Overall, the benchmark rates would represent a savings of **5%** in a typical family's overall budget.³¹

The experience of Coalition members confirms the truth of Professor Pollin's figures:

- ❑ Clients of Coalition member the Housing Assistance and Resource Program, a rental assistance program in Pennsylvania, have faced eviction proceedings prompted by the high cost of phone conversations with incarcerated family members.³²
- ❑ Coalition member Bob Raymond, unable to pay the entire cost each month of calls from a member of his family, faced a collections agency, a lowered credit rating, and a block on his phone that made continued contact difficult and, at times, impossible.³³
- ❑ For Coalition members John and Linda Wojas, who are retired and living on a fixed income, the high cost of their daughter's collect calls imposes substantial financial and emotional burdens on their marriage.³⁴
- ❑ Coalition member Ann Brown³⁵ has been forced to take a second job in order to afford the cost of collect calls from her incarcerated son, one of the consequences of which is to reduce the time she has available to care for her teenage daughter. "I have hesitated over the past year about getting a second job, as we prefer a parent to be with her," she says, "but I don't have a choice at this point."³⁶

³¹ See Appendix B at 7.

³² Appendix A at 18.

³³ Appendix A at 2.

³⁴ Appendix A at 3.

³⁵ "Ms. Brown" is using a pseudonym to protect her privacy

³⁶ Appendix A at 1.

When a family emergency requires frequent phone calls, the costs can become truly astronomical. Coalition member Margaret Seefeldt, who lives close enough to her incarcerated husband to visit occasionally, still had to pay \$1,600 one month to receive his phone calls. Moreover, Ms. Seefeldt explained that she spent a considerable amount of time and money just waiting for MCI's operators to put her calls through to her husband, a significant hidden cost of the current collect call-only system.³⁷

Many families in the Coalition live too far away from where their loved ones are incarcerated to make frequent visits, some are too far away to visit at all, and for all of these members the current system substantially interferes with their family relationships.

- Coalition member Ronald Pilenzo and his wife drive 2,000 miles round trip to visit their son a few times each year because they cannot afford to fly. The Pilenzos spend more than \$100 each month to speak to their son two or three times each week, for 20 minutes at a time.
- Coalition member Jane Ryan³⁸ makes a similar journey, two days by car, to visit her son when she can. They try to speak at least once or twice each month – she could afford to speak to him more often, perhaps once a week, but the current system causes frequent service interruptions.³⁹

³⁷ Appendix A at 3.

³⁸ “Ms. Ryan” is using a pseudonym to protect her privacy.

³⁹ Appendix A at 2-3.

- Coalition member Eileen Gray, who suffers “tremendous cost” to speak to her young son, empathizes with the parents of another young man in the same facility whose family could not afford to be in contact at all.⁴⁰

2 The System Prevents Social Services Nonprofits From Doing Critically Important Work to Promote Reentry and Social Stability.

The excessive cost of collect calls from prison undercuts social services agencies – including agencies that are members of the Coalition – in their efforts to help former prisoners re-enter society after completing periods of incarceration.⁴¹ For example, Coalition member HIV/AIDS Volunteer Enrichment Network, Inc., which supports people with AIDS in Maryland, must raise additional funding in order to accept collect calls from clients who are incarcerated but preparing to complete their terms. The agency can only afford to accept roughly a dozen collect calls per year when fundraising efforts are successful. Describing the circumstances of prisoners with AIDS, a representative stated, “We are their only link to the kind of support they need to deal with the physical, emotional and psychosocial impact of HIV and AIDS on their lives. We would answer collect calls more frequently and talk longer if we did not have to pay so much.”⁴²

3. The System Interferes With Communication Between Incarcerated Persons and the Counsel Representing Them in Criminal & Civil Matters

A lack of communication prevents legal service providers from being at their most effective, and damages the ability of their clients to obtain effective legal representation. The cost of collect calls is of particular concern because many prisoners are unable to read and

⁴⁰ Appendix A at 1

⁴¹ *See generally* Appendix A section B; 2004 Comments at 22-26, Appendix A section II.

⁴² Appendix A at 4

write.⁴³ When attorneys are too far away to visit in person, as many are, a telephone call is the only way for lawyer and client to communicate. The ability of incarcerated litigants to communicate with their attorneys is of paramount importance in protecting prisoners' Sixth and Fourteenth Amendment rights to counsel.⁴⁴

Many attorneys cannot afford to accept collect calls at exorbitant rates. North Carolina Prisoner Legal Services, a Coalition member, represents prisoners in criminal matters and in prison conditions cases, but can only afford to accept calls in emergencies -- when a client or potential client is threatened with immediate and serious physical harm.⁴⁵ The Maryland-based Public Justice Center ("PJC"), also a member of the Coalition, is located close enough to a prison to enable its staff to visit clients, but this is not a satisfactory solution. The organization is unable to accept collect calls, and, as a result, incarcerated clients are unable to reach their attorneys when time is of the essence. The attorneys at the Public Justice Center must visit the jail when they need to speak to clients and must rely on family or social service organizations, or on written communications, to communicate news of emergencies.⁴⁶ Another Coalition member, the Capital Area Immigrants' Rights Coalition ("CAIR"), a Washington, D.C.-based organization that assists immigrant detainees in obtaining legal services, also cannot afford to accept collect calls. Theoretically, the government allows detainees to make free calls to legal representatives like CAIR from detention centers, but because the detention center phones are out of service for "weeks—even months—at a time," often the only option is to place collect

⁴³ See 2004 Comments at 7 n.18.

⁴⁴ See 2004 Comments at 30-38.

⁴⁵ Appendix A at 13.

⁴⁶ Appendix A at 14

calls. But CAIR must turn these calls away. “If collect call rates were more reasonable, we would be able to . . . serve more clients more effectively” and reach “a broader range” of detained immigrants.⁴⁷

When non-profit or court-appointed attorneys do accept collect calls, the money to pay the phone bills often comes from funds that would otherwise be used to serve other clients. For example, Coalition member the National Immigrant Justice Center, which provides legal services to people in immigrant detention in the Midwest, reports that it “would be able to utilize the funds it saves from paying for collect calls by increasing legal [and other] services to the detained immigrant population”⁴⁸ Likewise, Coalition member the Office of the Appellate Defender (“OAD”) in New York City, which provides appellate representation *to* indigent defendants, explains that it spends an average of \$2,000 per month on collect calls from clients. OAD says that this money “would be used for additional legal or support staff were it not spent on the exorbitant collect calls.”⁴⁹ Coalition member the Louisiana Capital Assistance Center could double its mileage budget, allowing staff to visit clients in person and conduct more field investigations.”

D. Conclusion

For the reasons stated herein, the members of the Coalition respectfully request that the Commission i) establish benchmark long distance calling rates and eliminate per-call charges, and ii) require prison telephone service providers to allow debit calling. These two steps would

⁴⁷ Appendix A at 6.

“Appendix A at 11-13.

⁴⁹ *Ibid.*

”Appendix A at 11.

sustain family relationships, enable social service agencies to do their important work, and align Commission policy with important constitutional principles. More fundamentally still, these two steps would support communities across the country in their efforts to enable formerly incarcerated individuals to adjust to stable and successful lives after prison.

Respectfully submitted,

The Ad Hoc Coalition for the Right to
Communicate

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